ENROLLED ORIGINAL

A RESOLUTION

18-398

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 16, 2010

To declare the existence of an emergency with respect to the need to approve certain option-year contracts whose options were exercised by the Executive branch and not submitted to the Council for approval under section 451(b) of the District of Columbia Home Rule Act, and to authorize payment to contractors for the services received and to be received under the contracts.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Option Year Contracts Retroactive Approval and Payment Authorization Emergency Declaration Resolution of 2010".

Sec. 2. (a) Section 451(b) of the District of Columbia Home Rule Act ("Home Rule Act") states that "(n)o contract involving expenditures in excess of $1,000,000 during a 12-month period may be made unless the Mayor submits the contract to the Council for its approval and the Council approves the contract." D.C. Official Code § 1-204.51(b). That section was added to the District of Columbia Charter by Congress in 1995 at the request of the Council and has always been interpreted to require each option year of a contract to be submitted to the Council for review and approval.

(b) On January 7, 2009, the Attorney General emailed all agency contracting officers and ordered them to ignore the longstanding practice of this and previous administrations, and cease sending option contracts in excess of $1 million to the Council for review and approval. As a result, option-year contracts in excess of $1 million were not submitted to the Council for review and approval during the period from January 7, 2009 to October 1, 2009.

(c) The Council affirmed and clarified the clear requirements of the Home Rule Act and the longstanding practice of this and previous administrations to submit option-year contracts in excess of $1 million for Council review and approval by adopting the Criteria for Council Review of Contract Options Clarification Emergency Amendment Act of 2009, effective October 15, 2009 (D.C. Act 18-207; 56 DCR 8228), and the Criteria for Council Review of Contract Options Clarification Amendment Act of 2009, passed on 4th reading on September 22, 2009 (Enrolled version of Bill 18-203). After adoption of these acts, the Executive resumed transmitting option-year contracts in excess of $1 million. However, there remained a need to

obtain the actual option-year contracts for the period between January and October 1, 2009 that had been withheld by the Mayor not only for purposes of Council review and approval, but because these are public contracts involving the expenditure of public funds, and the public – as well as the Council – has a right to know whether contracts are being renewed and on what terms they are being renewed. The Council's Charter right to review contracts cannot be contingent upon whether the Executive decides to formally transmit contracts.

(d) A contract is either a multiyear contract that requires active Council approval under section 451(c) of the Home Rule Act, or it is a one-year contract that requires Council approval under section 451(b) of the Home Rule Act if the contract requires appropriations in excess of $1 million during the 12-month period. The approval of the 12-month base term of a contract in excess of $1 million does not obviate the Home Rule Act requirement that each option year in excess of $1 million be submitted to the Council for review and approval.

(e) Reviewing contracts of over $1 million is an important oversight function of the Council and the failure to be provided with these contracts, and other documents, impairs the Council's ability to discharge that function, as defined by the Charter.

(f) There exists an immediate need to retroactively approve and authorize payment for these option-year contracts because the contracts have not been approved by the Council as required by the Home Rule Act.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Option Year Contracts Retroactive Approval and Payment Authorization Emergency Act of 2010 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

18-399

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 16, 2010

To declare the existence of an emergency with respect to the need to amend the Legalization of Marijuana for Medical Treatment Initiative of 1999 to delay the applicability of the initiative until the effective date of the Legalization of Marijuana for Medical Treatment Initiative Amendment Act of 2010.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Legalization of Marijuana for Medical Treatment Initiative Applicability Emergency Declaration Resolution of 2010".

Sec. 2. (a) In 1998, 69% of District voters approved Initiative 59, the Legalization of Marijuana for Medical Treatment Initiative of 1999, which decriminalized the use of marijuana for medical purposes.

(b) The effectiveness of marijuana in the treatment of HIV/AIDS, pain, peripheral neuropathy, multiple sclerosis, cancer, Hepatitis C, nausea and vomiting, Amyotrophic Lateral Sclerosis, epilepsy, and Alzheimer's Disease has been well documented in 16 major medical journals, including the New England Journal of Medicine, the Journal of Clinical Pharmacology, and the Journal of Clinical Oncology.

(c) The Institute of Medicine has found that marijuana is less addictive than tobacco and alcohol and is effective at treating certain medical conditions. The report also found that although some of the conditions that marijuana treats can be treated with other medications, the approved medications do not work for all patients.

(d) The 8 medical associations that have issued statements in support of the legalization of marijuana for medical purposes are the:

(1) American Academy of Addiction Psychiatry;
(2) American Academy of HIV Medicine;
(3) American College of Physicians;
(4) American Nurses Association;
(5) American Public Health Association;
(6) HIV Medicine Association of the Infectious Diseases Society of America;
(7) National Association for Public Health Policy; and
(8) National Nurses Society on Addictions.

(e) The American Medical Association has urged the federal government to reconsider marijuana's classification as a dangerous drug with no accepted medical use, and the American Academy of Family Physicians recognizes the use of marijuana for medical treatment under medical supervision.

(f) Despite the effectiveness of medical marijuana in treating serious medical conditions and broad support within the medical community, Congress blocked implementation of the District's medical marijuana initiative by placing a rider on a District appropriations bill in 1998. The rider has been added to each successive District appropriations bill since 1998.

(g) Congress lifted the rider that blocked the District from implementing its own medical marijuana program in December of 2009. The initiative is set to complete its period of Congressional review and become effective in early March.

(h) In the 11 years during which the District's medical marijuana law has been blocked by Congress, 14 states have implemented medical marijuana programs that allow for the regulation, cultivation, distribution, possession, and use of marijuana for medical purposes.

(i) On January 19, 2010, Chairman Vincent C. Gray and Councilmembers David A. Catania and Phil Mendelson introduced the Legalization of Marijuana for Medical Treatment Initiative Amendment Act of 2010. In addition to the 3 co-introducers, a majority of Councilmembers are sponsoring the legislation. The co-sponsors are the Honorable:

(1) Yvette Alexander;
(2) Michael Brown;
(3) Kwame Brown;
(4) Mary Cheh;
(5) Jack Evans;
(6) Jim Graham;
(7) Harry Thomas, Jr.; and
(8) Tommy Wells.

(j) The Legalization of Marijuana for Medical Treatment Initiative Amendment Act of 2010, as introduced on January 19, 2010 (D.C. Bill 18-622) ("Bill 18-622"), will allow the District take appropriate steps to implement a medical marijuana program that effectively meets the needs of patients who qualify to use marijuana for medical treatment and to capitalize on the lessons learned in other states in their implementation of medical marijuana programs, while preventing abuse of the program and diversion of marijuana for non-medical purposes and remaining faithful to the principles and objectives of Initiative 59. For example:

(1) Initiative 59 provided the right for seriously ill individuals to use marijuana for medical purposes but did not create a registration system for qualifying patients. Without a method for local law enforcement to determine whether a patient is authorized to use marijuana for medical purposes, patients may be subject to arrest, prosecution, and seizure of their medical supply of marijuana and have the burden to prove to the court that their use of marijuana is in compliance with the law. Eleven of the 14 states with medical marijuana programs created a registration system for qualifying medical marijuana patients. Bill 18-622 requires a registration system so that patients can be free from the threat of arrest, prosecution, and seizure by local law enforcement.

(2) Initiative 59 specifies which medical conditions and treatments qualify an individual to use marijuana for medical purposes. In the 11 years since the initiative passed, new research has been conducted regarding which conditions can be effectively treated with marijuana. Twelve of the 14 states authorize a state agency to add medical conditions and treatments to the list as new research emerges relating to which conditions marijuana can effectively treat. Bill 18-622 follows that model by authorizing the Department of Health to establish a list of qualifying medical conditions and treatments, properly placing this authority in the hands of medical experts.

(3) Initiative 59 allows patients to rely on oral recommendations from their physicians to use medical marijuana. This was appropriate in 1998 when there was fear within the medical community that doctors may be sanctioned by federal authorities for providing written recommendations for marijuana to seriously ill patients. Since then, a federal court case (*Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002)) established that doctors cannot be sanctioned for recommending marijuana. Now that this obstacle has been removed, 13 of the 14 states, and the District in Bill 18-622, require physician recommendations to be written. Written recommendations better enable the Department of Health, law enforcement, and courts to determine that a patient has received a legitimate recommendation.

(4) Initiative 59 allows a patient to get a recommendation to use marijuana from any District physician. Other states that have allowed any physician to provide the recommendation have attracted doctors who recommend marijuana to virtually any patient. To reduce this risk, Bill 18-622 requires that the recommendation come from a physician with an established relationship with the patient.

(5) Initiative 59 allows patients to designate health care practitioners, domestic partners, case workers, close friends, and family members to act as caregivers for the purposes of the medical marijuana program. However, it omits spouses from this list. Bill 18-622 remedies this omission by adding a patient's spouse to the list.

(6) Initiative 59 allows each patient to designate up to 4 caregivers who are authorized to possess marijuana for the patient. Allowing more than one caregiver makes it difficult for law enforcement to ensure that the caregivers and the patient are not collectively carrying more than an adequate medical supply of marijuana for the patient, which could lead to diversion of marijuana for non-medical purposes. To enable law enforcement to better prevent diversion, Bill 18-622 further limits the number of caregivers each patient may designate.

(7) Initiative 59 requires that a parent or legal guardian provide informed consent for a minor to be allowed to use marijuana for medical purposes. Bill 18-622 maintains this requirement but adds a further requirement, which 10 states have adopted, that the parent or guardian either act as the primary caregiver and control the minor's usage of marijuana or designate another adult to do so. Bill 18-622 requires adults to be responsible for compliance with the medical marijuana and controlled substances laws, rather than a minor.

(8) Initiative 59 limits the amount of marijuana that a patient or caregiver may possess to an adequate medical supply but does not define the amount, leaving it to the judicial system to determine, possibly on a case-by-case basis. Defining the maximum amount a patient or caregiver may legally possess provides clarity for individuals to comply with the law and for local law enforcement officials charged with enforcing District drug laws. All 14 states with

medical marijuana laws define the maximum amount. Bill 18-622 requires the Department of Health to determine what amount of marijuana constitutes an adequate medical supply.

(9) Marijuana, like all types of drugs, can interact with other medications in potentially dangerous ways. Initiative 59 does not provide guidance on this important issue. As federal law prevents pharmacies from distributing marijuana, the systems that are designed to find dangerous drug interactions before they happen, which pharmacies use, are unlikely to find a dangerous interaction involving marijuana. Bill 18-622 requires medical marijuana patients to be educated about potentially dangerous interactions between marijuana and other medications.

(10) Initiative 59 does not provide any guidance about implementing or regulating a medical marijuana program. Bill 18-622 requires the Mayor to create a closed system to regulate the cultivation, distribution, and possession of medical marijuana. This system will enable the Department of Health to prevent diversion of marijuana for non-medical purposes.

(11) Initiative 59 does not address how to prevent theft of marijuana from dispensaries or how to prevent diversion of marijuana for non-medical purposes. As dispensaries will have a larger quantity of marijuana on the premises than individual patients, they will be targets for theft and sites for potential diversion. It is critical that dispensaries are subject to regulation designed to prevent these problems. Bill 18-622 requires dispensaries to implement security plans to prevent theft and diversion and prohibits felons and individuals with drug convictions from owning or working in a dispensary.

(12) Initiative 59 does not cap the number of dispensaries that may operate in the District. Other jurisdictions that do not cap the number have experienced problems. For example, after California passed its medical marijuana law, over 1,000 marijuana dispensaries were established in the city of Los Angeles. Recently, Los Angeles has taken steps to close the vast majority of these dispensaries and cap the number of dispensaries that may operate. To prevent the District from being inundated with dispensaries, Bill 18-622 caps the number of dispensaries that may operate in the District. It also prohibits dispensaries from locating near schools and youth centers.

(k) Given that Bill 18-622 will not be effective until after Initiative 59 is projected to be in effect, it is important to delay the implementation of the initiative until Bill 18-622 is in effect and the District has had sufficient time to put a regulatory framework in place.

(l) Because individuals with serious illnesses that can be effectively treated with marijuana are suffering right now, Bill 18-622 will be given expeditious consideration by the Council.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Legalization of Marijuana for Medical Treatment Initiative Applicability Emergency Amendment Act of 2010 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

18-400

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 16, 2010

To declare the existence of an emergency with respect to the need to authorize and provide, on an emergency basis, for the issuance, sale, and delivery of District of Columbia revenue bonds in one or more series, payable from special assessment revenues and issued pursuant to section 490 of the District of Columbia Home Rule Act, to authorize the Mayor to use the bond proceeds to provide funding for the initial installation of energy efficiency and renewable energy retrofits and improvements, and to impose a real property tax assessment on the real property of an owner who has entered into an energy efficiency loan agreement.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Energy Efficiency Financing Emergency Declaration Resolution of 2010".

Sec. 2. (a) Energy conservation efforts, including the promotion of energy efficiency and renewable energy improvements to residential, commercial, and other real property, are necessary to address the issue of global climate change and may reduce the consumers' energy costs.

(b) The upfront cost of making residential, commercial, or other real property consume less fossil fuel prevents many property owners from making energy efficient or renewable energy improvements. To make energy efficient and renewable energy improvements more accessible and to promote the installation of those improvements, it is necessary to authorize a procedure to provide funds for the initial cost of installing energy efficiency improvements.

(c) An important public purpose will be served by a voluntary assessment program that provides the authority and the means to provide funds for the initial installation of energy efficiency and renewable energy improvements that are permanently attached to residential, commercial, industrial, or other real property.

(d) Section 490 of the District of Columbia Home Rule Act provides that the Council may, by act, authorize the issuance of District bonds to borrow money to finance, refinance, or reimburse, and to assist in the financing, refinancing, or reimbursing of, the costs of capital projects or undertakings that will contribute to the health, welfare, or safety of residents of the

District as determined by the Council.

(e) The authorization, issuance, sale, and delivery of self-supporting revenue bonds for the payment of costs of a program to provide funds for the installation of energy efficiency and renewable energy improvements that are permanently attached to residential, commercial, or other real property will contribute to the health, welfare, and safety of residents of the District, are in the public interest, and will accomplish the purposes and intent of section 490 of the District of Columbia Home Rule Act.

(f) There exists an immediate need to support District's application for Federal Stimulus Funds under the U.S. Department of Energy's Retrofit Ramp-Up Grant program to receive a $35 million grant award to provide seed money for a property-assessed clean energy efficiency financing program.

(g) Applications under the U.S. Department of Energy's Retrofit Ramp-Up Grant Solicitation were due on December 14, 2009 and are currently being reviewed by the Department of Energy. The District's application would be bolstered by the enactment of the enabling legislation, the Energy Efficiency Financing Emergency Act of 2010.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Energy Efficiency Financing Emergency Act of 2010 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.